

Organizations that make application to the Department of Revenue and are determined to be exclusively religious, educational, or charitable, receive an exemption identification number (an "E" number). See 86 Ill. Adm. Code 130.2007. (This is a GIL.)

November 30, 1998

Dear Mr. Xxxxxx:

This letter is in response to your letter dated September 16, 1998. The nature of your letter and the information you have provided require that we respond with a General Information Letter which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

We are requesting a private letter ruling as described in Illinois Administrative Code Section 1200.110. The request involves the liability and payment of Sales Tax, Retailers Occupation Tax for sales of religious material in the church bookstore.

We recently requested clarification of information we received from the Department of Revenue. A copy of the original letter and your response is enclosed. We firmly believe that according to the code, the church falls within the exemptions granted. In light of the following we respectfully request that the exemption be applied to the sales of religious materials in the church.

1. The Illinois Administrative Code (Code) states the following in regard to Retailers' Occupation Tax. Section 130.2005(a)(1)(a) 'There are some very limited exemptions from the Retailers' Occupation Tax for sales by exclusively charitable, religious and educational organizations and institutions.'

We believe that ORGANIZATION's sales of books, tapes and other miscellaneous items to its members falls within one of the exemptions. The church is non profit corporation with recognition by the Internal Revenue Service as a tax exempt organization under code section 501(c)(3). The exclusive purpose of the church is religious. Additionally, as detailed below the sale of books and tapes is a direct function of the church in fulfilling its exempt, religious purpose.

2. The specific exemptions provided in the code that apply to the church are listed below:

Section 130.2005(a)(2) Sales to members, etc.

ORGANIZATION operates a tape and bookstore selling sermon tapes, books authorized by guest speakers and series of messages by the pastor or other closely related speakers. The tape table and bookstore operates only before and after church services on Sunday and Wednesday. During these limited times church members have an opportunity to purchase a tape of this week's message by the pastor. In addition, sermon series from previous messages are available. Members can also purchase tapes of guest speakers and related materials.

The code clearly states in 130.2005(a)(2)(A) that 'sales by such an organization are not taxable if they are made to the organization's members,...'

As an example the code states in 130.2005(a)(2)(B) that 'The selling organization would incur Retailers' Occupation Tax Liability if it should engage in selling any of the foregoing items at retail to the public.' The spirit of the code seems to be that the ROT should be imposed if the sale of items intends to be held out as a retail operation, in this case much like a Christian bookstore at the mall. ORGANIZATION sells a very limited number of items to a limited group. This is not a retail store offering a wide range of religious items to the general public.

Section 130.2005(a)(3) Noncompetitive Sales

The code allows a second exception if 'such selling is noncompetitive with business establishments.' Five tests for determining that such selling is noncompetitive are given. ORGANIZATION meets all five requirements as described below:

- i) The transactions are conducted by the members for the charitable entity and not by any franchisee or licensee.
- ii) All of the proceeds go to the charity (church).
- iii) The bookstore is operated on a very limited basis. It is open before and after Sunday and Wednesday services, approximately 2-3 hours total per week. The code states that the transaction should be held "a reasonably small number of times within a year." Since the test of reasonableness is an administrative one, we can only reasonably assume that as concerns competitive sales, a Christian bookstore would operate anywhere from 48 to 72 hours per week. It is hard to imagine how under that comparison the church sales would be considered competitive.
- iv) The final test relates to motive. The code states 'The reasonably ascertainable dominant motive of most

transferees of the items sold must be the making of a charitable contribution, with the transfer of property being merely incidental and secondary to the dominant purpose of making a gift to the charity.' The church has as its dominant motive the distribution of material, which is integral to its religious purposes. The church exists to spread the word of God and the gospel of Jesus Christ. The sale of sermon tapes and books is as much a part of fulfilling this purpose as virtually anything else the church does. The tapes and books are not sold to generate profits except to cover expenses and further the ministry of the church. While no one can reasonably determine the motive of the individuals purchasing materials. It is reasonable to say that purchase of the materials does support the ministry of the church directly. To tax the sale of this material is essentially the same as taxing the church, or the Bible, the Word of God itself.

3. As way of example Ohio law exempts from sales tax any sale of property 'to churches.'

State law further provides that no exemption applies to sales made in the course of any 'trade or business.' The state assessed taxes on most purchases made by a religious organization known as 'The Way.' It disputed the organization's claim that it was a 'church,' and also concluded that the organization's sales of books and tapes constituted a 'trade or business' that precluded any tax exemption. The state Supreme Court ruled in favor of the organization. First, it concluded that the organization was a church:

It has adherents. It adopts the Bible as the main source of its dogma, it propagates a comprehensive set of religious objectives and beliefs which attempt to answer its adherents' religious concerns, and it conducts services....It employs ministers who preside at sacramental ceremonies, operates schools to train ministers, and sends forth missionaries to spread its beliefs.

Second, the court ruled that the organization's sale of tapes and records did not constitute a 'trade or business.' It concluded that the organization advances religion by selling these materials. Despite receiving more for these items than it paid for them, The Way did not distribute any profit to its trustees, officers, or employees, but, instead, paid them modest salaries. The Way accumulated these profits and expanded its operations, including building a new church facility. Moreover, The Way's prime source of funding came from voluntary contributions. The Way's motive is to advance its religion, and it employs books and tapes in a functionally related way to accomplish this. Selling books and tapes to its followers is not a business but a means to its religious ends.

While acknowledging that state sales tax exemption is an individual state matter, Ohio operates much like Illinois in examining the motive of the sales. ORGANIZATION clearly has as its motive the accomplishment of its purpose to advance religion. The revenue from the sale of items are used to cover the cost of sales and any net

profit is distributed in the furtherance of the organization's exempt purpose. The Ohio case above perhaps provides a striking precedent similar in many ways to the case of ORGANIZATION.

If the intent of the Illinois statute is to provide an exemption when the case is clearly a charitable, religious or educational institution, this certainly fits that criteria. The requirement of the sales tax imposes an additional burden on not only the institution engaged in exempt sales but the purchase of religious materials as well. If the revenue from the sales is exempt from state and federal income tax, it stands to reason that the exemption from sales tax is warranted as well.

We have not been able to locate any similar letter rulings that would effectively apply to this situation. It appears that although this is not a unique situation, most churches simply operate under an assumption of what they believe to be correct whether or not it is actually an accurate interpretation of the law. ORGANIZATION has operated under that same assumption since it first began. It was at the direction of Illinois Department of Revenue personnel that the practice was changed.

In conclusion, it appears that the sale of books and tapes by the church should fall under the exemption based on two separate criteria. First, sale is to members during limited hours surrounding the congregational meetings of the church. Second, the sales are noncompetitive in nature as outlined in the four criteria above. The primary motive in operating the church bookstore is to promote the fundamental purpose of the church which is to spread the Word of God, preach the Gospel and reach people for Christ's sake. All proceeds from these sales are used in according with this exempt purpose.

Thank you for your consideration. We look forward to your reply.

As stated in the Department's June 29, 1998 letter, organizations that make application to the Department of Revenue and are determined to be exclusively religious, educational, or charitable, receive an exemption identification number (an "E" number). See the enclosed copy of 86 Ill. Adm. Code 130.2007. This number evidences that the Department recognizes the organizations as exempt from incurring Use Tax when purchasing tangible personal property in furtherance of their organizational purposes.

It appears from your letter that your client has received an E number from the Department. However, please note that if an organization does not have an E number, then its purchases are subject to tax. Please be aware that only sales to organizations holding the E number are exempt, not sales to individual members of the organization.

Your letter indicates that you are interested in the tax consequences surrounding sales by exempt organizations. The Department's regulations state that organizations having E numbers are allowed to engage in a very limited amount of retail selling without incurring Retailers' Occupation Tax liability. These limited amounts of selling are described in the enclosed copy of 86 Ill. Adm. Code 130.2005(a)(2) through (a)(4).

An exempt organization may engage in sales to members, noncompetitive sales, and certain occasional dinners and similar activities (two fundraisers a year) without incurring Retailers' Occupation Tax liability.

In regards to sales to members, please note that the population to which sales are made is limited to persons specifically associated with that exempt organization and must be for the primary purpose of the selling organization. If such sales are made to the public at large the selling activity is subject to the Retailers' Occupation Tax. See section 130.2005(a)(2) through (a)(4). If your client's sales are only made to members and are for the organization's primary purpose, then they would not incur Retailers' Occupation Tax liability.

In determining whether the sales are for the primary purpose of the selling organization depends on the nature of the tangible personal property sold and how that tangible personal property is used. If an organization sells literature or other items of tangible personal property that would place them in competition with other religious bookstores, the sales generally would not be primarily for the purpose of the selling organization. (i.e. sales to the public) However, sales of choir robes or like tangible personal property to members would generally be primarily for the purpose of the selling organization.

I hope this information is helpful. The Department of Revenue maintains a Web site which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.